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*Attorneys for Defendant  
Everest National Insurance Company*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

JUDSON MAC DUFF,

Plaintiff,

vs.

EVEREST NATIONAL INSURANCE d/b/a  
EVEREST INSURANCE COMPANY, a foreign  
corporation; DOE EVEREST NATIONAL  
INSURANCE d/b/a EVEREST INSURANCE  
COMPANY EMPLOYEE, an individual; DO  
INDIVIDUALS I-X, inclusive; and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

Case No.:

**EVEREST NATIONAL  
INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

**UNDER 28 U.S.C. § 1441(b) (DIVERSITY)**

Defendant EVEREST NATIONAL INSURANCE COMPANY ("Everest" or "Defendant")  
(incorrectly named as "Everest National Insurance"), by and through its attorneys of the law firm of  
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, pursuant to 28 U.S.C. §§ 1332, 1441(b), and  
1446, hereby removes this case from the Eighth Judicial District Court for Clark County, Nevada to  
the United States District Court for the District of Nevada. In support of this Notice, Everest states  
the following:

///

///



**BACKGROUND**

1  
2 1. This is an insurance coverage case arising out of an alleged wrongful denial of  
3 coverage for plaintiff Judson Mac Duff's ("Plaintiff") uninsured/underinsured motorist ("UIM")  
4 claim.

5 2. On December 29, 2022, Plaintiff filed a complaint in the Eighth Judicial District Court  
6 for Clark County, Nevada, case number A-22-863217-C. "Complaint," attached hereto as Exhibit A.

7 3. Plaintiff alleges that Everest wrongfully failed and refused to timely pay Plaintiff UIM  
8 benefits upon his demand in November 2022. Complaint ¶¶ 25–30.

9 4. Plaintiff asserts claims for Breach of Contract, Breach of the Implied Covenant of  
10 Good Faith and Fair Dealing, Violation of Nevada's Unfair Claims Practices Act, and Unjust  
11 Enrichment. Complaint at 6–10.

**IDENTITIES OF PARTIES**

12  
13 5. Plaintiff Judson Mac Duff is alleged to be a resident of Clark County, Nevada.  
14 Complaint ¶ 1.

15 6. Defendant Everest is a Delaware corporation with its principal place of business in  
16 New Jersey.

17 7. Defendant Doe Everest National Insurance d/b/a Everest Insurance Company  
18 Employee ("Doe Employee") is alleged to be an employee of Everest but is not alleged to be a  
19 resident of any state. *See* Complaint ¶ 3.

**TIMELINESS OF REMOVAL**

20  
21 8. Plaintiff filed the Complaint in this matter on December 29, 2022, in the District Court  
22 of Clark County, Nevada.

23 9. Everest was served with the Summons and Complaint through the Nevada  
24 Department of Insurance, by mail, via letter sent on January 4, 2023.

25 10. Therefore, this notice of removal is timely filed within thirty (30) days after Everest's  
26 receipt of pleadings that provided evidence that this case was removable as required by 28 U.S.C.  
27 §1446(b).

28 ///

**DIVERSITY OF CITIZENSHIP EXISTS BETWEEN PROPERLY JOINED PARTIES**

11. To establish diversity, there must be complete diversity of citizenship between each plaintiff and each defendant. 28 U.S.C. § 1332(a). A corporation is deemed a citizen of both its state of incorporation and its principal place of business. 28 U.S.C. § 1332(c)(1).

12. The Complaint alleges that Plaintiff is a resident of Clark County, Nevada.

13. Defendant Everest is a corporation formed and existing under the laws of Delaware with its principal place of business in New Jersey.

14. The Complaint alleges that Doe Employee is an individual employed by Everest, but there is no allegation regarding Doe Employee's residence. *See* Complaint ¶ 3. The citizenship of Doe Employee and defendants Doe Individuals I–X and Roe Corporations I–X must be disregarded because they are sued under fictitious names. *See* 28 U.S.C. § 1441(b)(1) (noting that in the diversity analysis the citizenship of defendants sued under fictitious names “shall be disregarded”).

15. Therefore, complete diversity exists in this matter because Plaintiff is a citizen of Nevada and Everest is not. 28 U.S.C. § 1332(a)(1).

**AMOUNT IN CONTROVERSY**

16. Plaintiff has alleged damages “in excess of” \$15,000.00.” Complaint at 10. The Nevada Rules of Civil Procedure prohibit the stating of a higher amount of damages in the Complaint. *See* NRCP Rule 8(a).

17. It is well-settled among Ninth Circuit courts that, where the amount in controversy is not specifically stated, the defendant need only show by a preponderance of the evidence that the complaint alleges damages in excess of \$75,000. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 375-76 (9th Cir. 1997).

18. The defendant can meet this burden by showing that it is “facially apparent” from the complaint that the jurisdictional amount is in controversy. *See id.* at 377; *see also Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001) (holding that district court may consider whether jurisdictional amount is “facially apparent” from the complaint).

19. “[A] removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754

(11th Cir. 2010). The defendant merely needs to prove that it is more likely than not that the amount in controversy satisfies the jurisdictional amount. *See Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

20. Here, Plaintiff specifically alleges damages “in excess of \$15,000.00” for each of his First, Third, and Fourth Claims for Relief. Complaint ¶¶ 45, 68, 72. But more specifically, Plaintiff’s First Claim for Relief alleges that “Plaintiff has suffered damages up to and including the limits of all available underinsured motorist coverage for personal injury . . . . [And] expenses for medical care and treatment . . . .” *Id.* ¶¶ 44–45.

21. Plaintiff also alleges that on or about November 2, 2022, he made a demand for \$1,000,000.00 in UIM benefits, based on his “damages that at the time amounted to \$170,920.16.” *Id.* ¶ 18.

22. As Plaintiff’s claims rely on the allegation that Everest wrongfully failed and refused to remit a payment of \$1,000,000.00 to compensate Plaintiff for his then \$170,920.16 in damages, it is facially apparent that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. §1332.

23. Based on the amount in controversy, removal is proper 28 U.S.C. 28 § 1332(a).

### **VENUE**

24. Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a)–(b). The state court in which this action was filed lies within the division and district of the United States District Court wherein this Notice of Removal is filed.

### **WRITTEN NOTICE OF REMOVAL**

25. Written notice of the filing of this Notice of Removal is concurrently being served on the Clerk of the District Court of Clark County, and Plaintiffs’ counsel, as required by 28 U.S.C. § 1446(d).

### **COPIES**

26. Pursuant to 28 U.S.C. §1446(a), USLIC is required to attach copies of “all process, pleadings and orders served upon” USLIC in this action. USLIC attaches the following:

///

1 a) Letter served by Department of Insurance dated January 4, 2023, with  
2 Summons and Complaint, Exhibit A;

3 **CONCLUSION**

4 WHEREFORE, Defendant Everest National Insurance Company prays for removal of the  
5 above-captioned matter to this Court, and respectfully requests that this Court assume jurisdiction of  
6 this lawsuit and take all such further action as deemed just and proper.

7  
8 DATED this 1st day of February, 2023.

9  
10 WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

11  
12 /s/ Howard J. Russell

Howard J. Russell, Esq.

Sebastian Cribari, Esq.

WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

Las Vegas, NV 89118

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15  
16 *Attorneys for Defendant*

*Everest National Insurance Company*

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) \_\_\_\_\_

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.